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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

REG-103477-14

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Chapter 4 Regulations Relating to Verification and Certification Requirements for Certain Entities and Reporting by Foreign Financial Institutions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulation.

SUMMARY: This document contains proposed regulations under chapter 4 of Subtitle A (sections 1471 through 1474) of the Internal Revenue Code of 1986 (Code) describing the verification requirements (including certifications of compliance) and events of default for entities that agree to perform the chapter 4 due diligence, withholding, and reporting requirements on behalf of certain foreign financial institutions (FFIs) or the chapter 4 due diligence and reporting obligations on behalf of certain non-financial foreign entities. These proposed regulations also describe the certification requirements and procedures for IRS's review of certain trustees of trustee-documented trusts and the procedures for IRS's review of periodic certifications provided by registered deemed-compliant FFIs. In addition, these proposed regulations describe the procedures for future modifications to the requirements for certifications of compliance for participating FFIs. These proposed regulations also describe the requirements for certifications of compliance for participating FFIs that are members of

consolidated compliance groups. In addition, in the Rules and Regulations section of this issue of the **Federal Register**, the Department of the Treasury (Treasury Department) and IRS are issuing temporary regulations that provide additional guidance under chapter 4 (temporary chapter 4 regulations). The text of the temporary chapter 4 regulations also serves as the text of the regulations contained in this document that are proposed by cross-reference to the temporary chapter 4 regulations. The preamble to the temporary chapter 4 regulations explains the temporary chapter 4 regulations and these proposed regulations that cross-reference to the temporary chapter 4 regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-103477-14), Internal Revenue Service, Room 5203, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-103477-14), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224; or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS-REG-103477-14).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kamela Nelan, (202) 317-6942; concerning submissions of comments and/or requests for a public hearing, Regina Johnson, (202) 317-6901 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Background

I. In General

A. Chapter 4

Sections 1471 through 1474 under chapter 4 of Subtitle A (chapter 4) were added to the Code on March 18, 2010, as part of the Hiring Incentives to Restore Employment Act of 2010, Public Law 111-147. Chapter 4 (commonly known as the Foreign Account Tax Compliance Act, or FATCA) generally requires withholding agents to withhold tax on certain payments to foreign financial institutions (FFIs) that do not agree to report certain information to the IRS regarding their U.S. accounts under section 1471(b)(1). Chapter 4 also generally requires withholding agents to withhold tax on certain payments to certain non-financial foreign entities (NFFEs) that do not provide to the withholding agent information on their substantial United States owners (substantial U.S. owners) or a certification that they have no such owners. On January 28, 2013, final regulations (TD 9610) under chapter 4 were published in the **Federal Register** (78 FR 5874), and on September 10, 2013, corrections to the final regulations were published in the **Federal Register** (78 FR 55202). TD 9610 and the September 2013 corrections are referred to collectively in this preamble as the 2013 final regulations. On March 6, 2014, temporary regulations (TD 9657) under chapter 4 were published in the **Federal Register** (79 FR 12812) and corrections to the temporary regulations were published in the **Federal Register** on July 1, 2014, and November 18, 2014 (79 FR 37175 and 78 FR 68619, respectively). In this preamble, TD 9657 and the corrections thereto are referred to collectively as the 2014 temporary regulations, and together with the 2013 final regulations, as the chapter 4 regulations. A notice of proposed rulemaking cross-referencing the 2014 temporary regulations was published

in the **Federal Register** on March 6, 2014 (79 FR 12868).

To address situations where foreign law would prevent an FFI from reporting directly to the IRS the information required by chapter 4, the Treasury Department, in collaboration with certain foreign governments, developed two alternative model intergovernmental agreements, known as the Model 1 IGA and the Model 2 IGA. Under the Model 1 IGA, an FFI that is treated as a reporting Model 1 FFI is treated as complying with and not subject to withholding under section 1471 provided that the FFI complies with the requirements specified in the Model 1 IGA and reports information about its U.S. accounts to the Model 1 IGA jurisdiction, which is followed by the automatic exchange of that information on a government-to-government basis with the United States. Under the Model 2 IGA, an FFI that is treated as a reporting Model 2 FFI follows the terms of the FFI agreement and reports information about U.S. accounts directly to the IRS. See Revenue Procedure 2014-38, 2014-29 I.R.B. 131, as may be amended, for the FFI agreement. An FFI identified as a nonreporting financial institution pursuant to a Model 1 or Model 2 IGA is not required to report information on U.S. accounts unless specifically required as a condition of its applicable chapter 4 status.

II. Background on Sponsored Entities

A. In general

The chapter 4 regulations permit certain FFIs and NFFEs to be sponsored by other entities for purposes of satisfying their chapter 4 requirements. Under the 2013 final regulations, an FFI treated as complying with the requirements of section 1471(b)(1) (a deemed-compliant FFI) includes a sponsored FFI. In addition, the 2014

temporary regulations provide that a NFFE excepted from providing information regarding its substantial U.S. owners to a withholding agent (an excepted NFFE) includes a NFFE that is a direct reporting NFFE or a sponsored direct reporting NFFE. In the preamble to the 2014 temporary regulations, the Treasury Department and IRS announced that regulations describing the verification requirements of a sponsoring entity of a sponsored FFI or sponsored direct reporting NFFE (sponsored entities) would be proposed and issued separately from the 2014 temporary regulations.

B. Background on sponsored FFIs and trustee-documented trusts

The chapter 4 regulations provide two general categories of deemed-compliant FFIs: registered deemed-compliant FFIs and certified deemed-compliant FFIs. A registered deemed-compliant FFI includes an FFI that satisfies the requirements of §1.1471-5(f)(1)(i)(F)(1) or (2) to qualify as either a sponsored investment entity or a sponsored controlled foreign corporation. A certified deemed-compliant FFI includes an FFI that satisfies the requirements of §1.1471-5(f)(2)(iii) to qualify as a sponsored, closely-held investment vehicle. The chapter 4 regulations provide that a sponsored FFI under any of the foregoing sections must have an agreement with a sponsoring entity under which the sponsoring entity performs, on behalf of the sponsored FFI, all of the due diligence, withholding, reporting, and other requirements that the FFI would have been required to perform if it were a participating FFI. A sponsoring entity of a sponsored FFI must register with the IRS as a sponsoring entity on Form 8957, FATCA Registration, via the FATCA registration website available at <http://www.irs.gov/fatca>, and must also register any sponsored investment entity or sponsored controlled foreign corporation within the time specified in §1.1471-5(f)(1)(i)(F)(3)(iii). The 2014 temporary

regulations reserve on the rules for verification of compliance and the events of default for a sponsoring entity of a sponsored FFI.

The Model 1 and Model 2 IGAs treat certain financial institutions as nonreporting financial institutions. Under Annex II of the Model 1 IGA, a nonreporting financial institution that is a sponsored investment entity, sponsored controlled foreign corporation, or sponsored, closely held investment vehicle is treated as a deemed-compliant FFI for purposes of section 1471. A sponsoring entity of a sponsored entity subject to a Model 1 IGA agrees to perform, on behalf of the sponsored entity, all of the due diligence, withholding, reporting, and other requirements that the sponsored entity would have been required to perform if it were a reporting Model 1 financial institution. As a result, a sponsoring entity of a sponsored entity subject to a Model 1 IGA reports to the applicable Model 1 IGA jurisdiction with respect to the financial accounts maintained by the sponsored entity.

Under the Model 1 and Model 2 IGAs, a nonreporting financial institution includes a financial institution that “otherwise qualifies as a deemed-compliant FFI . . . under relevant U.S. Treasury Regulations.” Thus, a financial institution covered by a Model 1 or Model 2 IGA may choose to qualify as a sponsored investment entity, controlled foreign corporation, or closely held investment vehicle pursuant to §1.1471-5(f) instead of Annex II of the Model 1 or Model 2 IGA. In such a case, the financial institution must satisfy all of the requirements applicable to such an entity in the regulations, including the requirement for the sponsoring entity to report information directly to the IRS, even in the case of a financial institution covered by a Model 1 IGA.

Under Annex II of the Model 2 IGA, a financial institution that is a sponsored

investment entity or sponsored controlled foreign corporation is treated as a registered deemed-compliant FFI, and a financial institution that is a sponsored, closely held investment vehicle is treated as a certified deemed-compliant FFI. A sponsoring entity of a sponsored entity subject to a Model 2 IGA agrees to perform, on behalf of the sponsored entity, all of the due diligence, withholding, reporting, and other requirements that the sponsored entity would have been required to perform if it were a reporting Model 2 FFI. As a result, the sponsoring entity of a sponsored entity subject to a Model 2 IGA registers with the IRS and reports to the IRS with respect to financial accounts of the sponsored entity. Annex II of the Model 2 IGA also provides that a registered deemed-compliant FFI must register with the IRS on the FATCA registration website and have its responsible officer certify every three years to the IRS that all of the requirements for the deemed-compliant category claimed by the financial institution have been satisfied since July 1, 2014.

The Model 1 and Model 2 IGAs treat certain FFIs that are trusts as nonreporting financial institutions. Under Annex II of the Model 1 IGA, a financial institution that is a trustee-documented trust is treated as a deemed-compliant FFI. Under Annex II of the Model 2 IGA, a financial institution that is a trustee-documented trust is treated as a certified deemed-compliant FFI. Under both the Model 1 IGA and the Model 2 IGA, a trust qualifies as a trustee-documented trust provided that the trustee of the trust is a U.S. financial institution, reporting Model 1 FFI, or participating FFI that reports all of the information required to be reported pursuant to the IGA with respect to U.S. accounts or U.S. reportable accounts (as applicable) of the trust. A trustee of a trustee-documented trust subject to a Model 1 or Model 2 IGA should register with the IRS. A trustee of a

trustee-documented trust subject to a Model 2 IGA reports to the IRS with respect to the trust, whereas a trustee of a trustee-documented trust subject to a Model 1 IGA reports to the applicable Model 1 IGA jurisdiction.

C. Background on sponsored direct reporting NFFEs

Section 1472(c)(1)(G) permits the Treasury Department and IRS to issue regulations exempting withholding agents from withholding or reporting under section 1472(a) with respect to payments beneficially owned by certain persons identified by the Treasury Department and IRS, which are referred to in the chapter 4 regulations as excepted NFFEs. As noted in Part II.A of this Background, the 2014 temporary regulations include direct reporting NFFEs as a class of excepted NFFEs.

A direct reporting NFFE is a NFFE that elects to report information about its substantial U.S. owners directly to the IRS (rather than to the withholding agent) and that meets the requirements of §1.1472-1(c)(3). A direct reporting NFFE may elect to be treated as a sponsored direct reporting NFFE if another entity, other than a nonparticipating FFI, agrees to act as its sponsoring entity for performing all of the due diligence, reporting, and other requirements that the NFFE would have been required to perform as a direct reporting NFFE. The sponsoring entity of a sponsored direct reporting NFFE must register with the IRS as a sponsoring entity and must also register the NFFE with the IRS as a sponsored direct reporting NFFE as required in the chapter 4 regulations. The sponsoring entity must also comply with the verification procedures and other compliance-related requirements provided in the regulations. The 2014 temporary regulations reserve on the verification procedures and the events of default for a sponsoring entity of a sponsored direct reporting NFFE.

Under section VI(b) of Annex I of the Model 1 and Model 2 IGAs, an active NFFE includes a NFFE that is treated as an excepted NFFE under the chapter 4 regulations. An active NFFE (including a direct reporting NFFE) does not need to be reported as a U.S. account by a reporting Model 1 FFI or reporting Model 2 FFI with which the NFFE holds an account.

III. Background on Verification Requirements for Participating FFIs and Compliance FIs

Under the chapter 4 regulations, a participating FFI is required to establish and implement a compliance program for satisfying its requirements under §1.1471-4. The responsible officer of the FFI must periodically certify to the IRS that the FFI maintains effective internal controls or, if the responsible officer cannot make this certification, he or she must make a qualified certification. If there is an event of default, the IRS will notify the FFI and request remediation. The FFI must respond to the notice of default and provide information to the IRS. If the FFI does not provide a response, the IRS may deliver a notice of termination that terminates the FFI's participating FFI status.

The chapter 4 regulations permit a participating FFI that is a member of an expanded affiliated group to elect to be part of a consolidated compliance program under the authority of a participating FFI, reporting Model 1 FFI, or U.S. financial institution that is a member of the same expanded affiliated group (compliance FI). The compliance FI must establish and maintain the consolidated compliance program and perform a consolidated periodic review on behalf of each member FFI that elects to be part of the consolidated compliance program (electing FFI).

IV. Background on Certification Requirements for Registered Deemed-Compliant FFIs

An FFI may be a registered deemed-compliant FFI if it meets the requirements of a class of FFIs specified in §1.1471-5(f)(1). Certain classes of registered deemed-compliant FFIs have compliance obligations as a condition of their status under this section. For example, a registered deemed-compliant FFI that is a nonreporting member of a participating FFI group under §1.1471-5(f)(1)(i)(B) must monitor its accounts to ensure that it identifies any account that becomes a U.S. account or an account held by a recalcitrant account holder or nonparticipating FFI and meets its requirement to transfer or close such accounts (or become a participating FFI). In order for the IRS to verify that a registered deemed-compliant FFI meets the requirements of its applicable deemed-compliant status and is satisfying any such compliance obligations, the chapter 4 regulations require a registered deemed-compliant FFI to have its responsible officer certify every three years to the IRS that the FFI meets the requirements for its applicable deemed-compliant status.

Explanation of Provisions

I. Sponsoring Entities of Sponsored FFIs

These proposed regulations provide verification requirements for a sponsoring entity of a sponsored FFI that are generally similar to the verification requirements for a compliance FI. See Part IV of this Explanation of Provisions for the verification requirements for consolidated compliance programs. Under these proposed regulations, a sponsoring entity must maintain a compliance program to oversee its compliance with respect to each sponsored FFI for purposes of satisfying the deemed-compliant status requirements of §1.1471-5(f)(1)(i)(F) or (f)(2)(iii) or an applicable Model

2 IGA. The deemed-compliant status requirements include: (i) the assumption by the sponsoring entity of due diligence, withholding, and reporting obligations on behalf of each sponsored FFI, and (ii) compliance with the additional requirements for status as a sponsoring entity, such as registering with the IRS.

These proposed regulations consolidate all of the verification requirements for a sponsoring entity. The 2014 temporary regulations, in §1.1471-5T(f)(1)(i)(F)(3)(vi), (f)(1)(i)(F)(3)(vii), (f)(2)(iii)(D)(4), and (f)(2)(iii)(D)(5), require a sponsoring entity to perform the verification procedures described in §1.1471-4(f) on behalf of a sponsored FFI and also perform the verification procedures described in §1.1471-5(j) and (k) on behalf of itself. The 2014 temporary regulations, in §1.1471-5T(j) and (k), reserved such verification procedures. These proposed regulations include all of the sponsoring entity's verification requirements in proposed §1.1471-5(j).

These proposed regulations also require that a sponsoring entity appoint a responsible officer (as defined in §1.1471-1(b)(116) of these proposed regulations) to oversee the compliance of the sponsoring entity with respect to each sponsored FFI for purposes of satisfying the requirements of §1.1471-5(f)(1)(i)(F) or (f)(2)(iii) or of an applicable Model 2 IGA. The responsible officer must certify to the IRS by July 1 of the calendar year following the end of each certification period that the sponsoring entity is compliant with the requirements to be a sponsoring entity and maintains effective internal controls with respect to all sponsored FFIs for which it acts (or provides a qualified certification) on the form and in the manner prescribed by the IRS. A sponsored FFI is not required to appoint its own responsible officer. Although the preamble to the 2014 temporary regulations states that under proposed regulations a

sponsoring entity would be required to make two separate compliance certifications (one on behalf of its sponsored FFI(s) and another on the sponsoring entity's own behalf), the Treasury Department and IRS have determined that a single certification is sufficient for this purpose.

Under these proposed regulations, in general, a sponsoring entity must make a certification regarding its compliance with respect to all sponsored FFIs for which it acts during the certification period. However, with respect to a certification period, a sponsoring entity is generally not required to certify for a sponsored FFI that first agrees to be sponsored by the sponsoring entity during the six month period prior to the end of the certification period, provided that the sponsoring entity makes certifications for such sponsored FFI for subsequent certification periods and the first such certification covers both the subsequent certification period and the portion of the prior certification period during which such FFI was sponsored by the sponsoring entity. However, the preceding sentence does not apply with respect to a sponsored FFI that, immediately before the FFI agrees to be sponsored by the sponsoring entity, was a participating FFI, registered deemed-compliant FFI, or sponsored, closely held investment vehicle. The sponsoring entity may certify for a sponsored FFI described in the preceding sentence for the portion of the certification period prior to the date that the FFI first agrees to be sponsored by the sponsoring entity if the sponsoring entity obtains from the FFI (or the FFI's sponsoring entity, if applicable) a written certification that the FFI has complied with its applicable chapter 4 requirements during such portion of the certification period, provided that: (1) the sponsoring entity does not know that such certification is unreliable or incorrect; and (2) the certification for the sponsored FFI for the subsequent

certification period covers both the subsequent certification period and the portion of the prior certification period during which such FFI was sponsored by the sponsoring entity. The first certification period begins on the later of the date the sponsoring entity is issued a GIIN to act as a sponsoring entity or June 30, 2014.

The requirements for the certification of compliance may be modified to include additional certifications or information (such as quantitative or factual information related to the sponsoring entity's compliance), provided that such additional information or certifications are published at least 90 days before being made effective in order to allow for public comment. The Treasury Department and IRS intend to coordinate any such modification to the requirements for the certification of compliance for sponsoring entities with any modification to the requirements for the certification of compliance for participating FFIs. See Part IV of this Explanation of Provisions for certifications required by participating FFIs.

These proposed regulations provide that the responsible officer of a sponsoring entity must make the certification described in §1.1471-4(c)(7) (preexisting account certification of a participating FFI) with respect to each sponsored FFI that enters into the sponsorship agreement with the sponsoring entity during the certification period. However, with respect to a certification period, the preexisting account certification is not required for a sponsored FFI if, immediately before it first agrees to be sponsored by the sponsoring entity, the FFI was a participating FFI, a sponsored FFI, or a registered deemed-compliant FFI that is a local FFI or a restricted fund, and the FFI (or the FFI's former sponsoring entity, if applicable) provides a written certification to the sponsoring entity that the FFI has made the preexisting account certification required of

it, provided that the sponsoring entity does not know that such certification is unreliable or incorrect. Furthermore, since a participating FFI could have up to two years to complete the required due diligence on its preexisting accounts under §1.1471-4(c)(3)(ii) and (c)(5)(i), the preexisting account certification is not required for a sponsored FFI that first agrees to be sponsored by the sponsoring entity during the two year period prior to the end of such certification period, provided that the sponsoring entity makes the preexisting account certification for such FFI for the subsequent certification period. The preexisting account certification for the certification period must be submitted by the due date of the sponsoring entity's certification of compliance for the certification period and on the form and in the manner prescribed by the IRS. With respect to a sponsored FFI for which the sponsoring entity is required to make a preexisting account certification, a preexisting obligation means any account, instrument, or contract (including any debt or equity interest) maintained, executed, or issued by the sponsored FFI that is outstanding on the earlier of the date the FFI is issued a GIIN as a sponsored FFI of the sponsoring entity or the date the FFI or the sponsoring entity first represents to a withholding agent or financial institution that the FFI is a sponsored FFI of the sponsoring entity.

These proposed regulations permit the IRS to make general inquiries to a sponsoring entity regarding its compliance with its applicable requirements, similar to the general inquiries the IRS may make to a participating FFI with respect to its compliance (as provided in final regulations under chapter 4 published together with the temporary chapter 4 regulations). These proposed regulations provide that the IRS may request any additional information from the sponsoring entity (including a copy of the

sponsorship agreement that the sponsoring entity has entered into with each sponsored FFI) necessary to determine its compliance with the due diligence, withholding, and reporting requirements of §1.1471-4 or an applicable Model 2 IGA with respect to each sponsored FFI and to assist the IRS with its review of account holder compliance with tax reporting requirements. These proposed regulations also provide that if the IRS determines that the sponsoring entity may not have substantially complied with the requirements of a sponsoring entity with respect to any sponsored FFI for which it acts, the IRS may make inquiries to the sponsoring entity regarding its compliance with the requirements of a sponsoring entity and may request the performance of specified review procedures. Inquiries regarding the compliance of a sponsoring entity with respect to a sponsored FFI subject to the requirements of an applicable Model 2 IGA will be made using the procedures described in these proposed regulations, except as otherwise provided in an applicable Model 2 IGA.

These proposed regulations describe the events of default for a sponsoring entity and the termination procedures following an event of default. The Treasury Department and IRS recognize that some events of default may relate only to a particular sponsored FFI (or several such FFIs) for which the sponsoring entity acts and thus should not affect the statuses of other sponsored FFIs for which the sponsoring entity acts or the status of the sponsoring entity. In other cases, an event of default may relate to a sponsoring entity's failure to comply with its own requirements, such as when it fails to establish and maintain a compliance program or perform a periodic review. Accordingly, these proposed regulations provide IRS the discretion to determine whether, based on facts and circumstances, an event of default should result in the

termination of the sponsoring entity's status as a sponsoring entity, the deemed-compliant statuses of one or more sponsored FFIs, or both the status of the sponsoring entity and the statuses of one or more sponsored FFIs. If a sponsoring entity's status is terminated, the sponsoring entity may not reregister as a sponsoring entity for any sponsored FFI or any sponsored entity subject to a Model 1 IGA without prior written approval from the IRS. A sponsored FFI whose sponsoring entity's status is terminated may register on the FATCA registration website as a participating FFI or registered deemed-compliant FFI or may be registered on the FATCA registration website as a sponsored FFI of a new sponsoring entity (other than an entity that has a relationship to the terminated sponsoring entity described in section 267(b)), as applicable. However, if the sponsored FFI's status is terminated (independent of a termination of the sponsoring entity), the sponsored FFI must obtain prior written approval from the IRS in order to register as a participating FFI or registered deemed-compliant FFI or be registered as a sponsored FFI of a new sponsoring entity.

The definition of sponsored FFI in the 2013 final regulations is limited to an entity that is a sponsored investment entity, sponsored controlled foreign corporation, or sponsored, closely held investment vehicle under §1.1471-5(f)(1)(i)(F) or §1.1471-5(f)(2)(iii). These proposed regulations expand the definition of sponsored FFI to also include a sponsored investment entity, sponsored controlled foreign corporation, or sponsored, closely held investment vehicle treated as a deemed-compliant FFI under an applicable Model 2 IGA. These proposed regulations do not impose verification requirements or specify events of default for a sponsoring entity of a sponsored entity subject to an applicable Model 1 IGA. The obligations of such a sponsoring entity are

governed by the laws and requirements of the applicable Model 1 IGA jurisdiction. However, the IRS may treat a sponsored entity covered by a Model 1 IGA as a nonparticipating FFI pursuant to Article 5(2)(b) of an applicable Model 1 IGA if the IRS determines that there is significant non-compliance with the obligations of the IGA by the sponsored entity that has not been resolved within 18 months. In addition, pursuant to the termination procedures described in the previous paragraph, the IRS may revoke the status of a sponsoring entity based on an event of default relating to one or more sponsored FFIs. Consistent with Annex II of the Model 1 IGA, such revocation would prevent the sponsoring entity from sponsoring an FFI subject to a Model 1 IGA. The IRS may also notify such Model 1 IGA jurisdiction of the revocation. A sponsored entity subject to a Model 1 IGA whose sponsor's status is terminated would need to become a reporting Model 1 FFI, obtain a new sponsor, or meet the requirements of another deemed-compliant status.

As described in Part II.B of the Background of this preamble, the Model 2 IGA allows certain sponsored FFIs to be treated as deemed-compliant FFIs and provides that the IRS may revoke a sponsoring entity's status if there is a material failure by the sponsoring entity to comply with the obligations described in Annex II of the IGA. Accordingly, the verification requirements and events of default in these proposed regulations apply to a sponsoring entity of a sponsored FFI subject to an applicable Model 2 IGA. In addition, the procedures for IRS inquiries specified in these proposed regulations apply to a sponsoring entity of a sponsored FFI subject to an applicable Model 2 IGA except to the extent otherwise provided in the applicable Model 2 IGA. Although Annex II of the Model 2 IGA permits the IRS to revoke a sponsoring entity's

status upon a material failure (as described above), because the Treasury Department and IRS believe that a consistent standard for when to terminate a sponsoring entity's status should apply, these proposed regulations provide that the IRS will not revoke the status of a sponsoring entity of a sponsored FFI subject to a Model 2 IGA unless there is an event of default and the procedures for termination described in these proposed regulations have been applied.

II. Trustees of Trustee-Documented Trusts

These proposed regulations provide that a trustee of a trustee-documented trust subject to a Model 2 IGA shall appoint a responsible officer who will maintain a compliance program and oversee the trustee's compliance with respect to each trustee-documented trust for purposes of satisfying the requirements of an applicable Model 2 IGA. The responsible officer must perform a periodic review of the sufficiency of the trustee's compliance program for each certification period. The responsible officer must also certify to the IRS that the trustee has established a compliance program, performed a periodic review, and reported to the IRS all of the information required to be reported with respect to each trustee-documented trust for each certification period. Certain late-joining trustee-documented trusts may be excluded from a certification under rules similar to those provided in these proposed regulations for sponsored FFIs. The IRS will not unilaterally revoke the status of, or issue a notice of default to, a trustee of such a trust. Instead, subject to the requirements of an applicable Model 2 IGA, these proposed regulations permit the IRS to make inquiries to the trustee regarding its compliance with its applicable requirements and notify the Model 2 IGA jurisdiction if the trustee has not complied with its requirements with respect to one or more trustee-

documented trusts established in that jurisdiction. The IRS may also notify an applicable Model 1 IGA jurisdiction of the trustee's non-compliance with respect to its requirements as a trustee of a trustee-documented trust subject to a Model 2 IGA if the trustee also acts on behalf of trustee-documented trusts in the Model 1 IGA jurisdiction or if the trustee is located in the Model 1 IGA jurisdiction.

III. Sponsoring Entities of Sponsored Direct Reporting NFFEs

These proposed regulations include verification requirements and the events of default for a sponsoring entity of a sponsored direct reporting NFFE. These proposed regulations also specify the requirements for a sponsorship agreement between a sponsoring entity and each sponsored direct reporting NFFE for which it acts.

Under these proposed regulations, a sponsoring entity must appoint a responsible officer to oversee the compliance of the sponsoring entity with respect to each sponsored direct reporting NFFE. The responsible officer of the sponsoring entity must make a periodic certification to the IRS on the form and in the manner prescribed by the IRS. The certification requirements of a sponsoring entity of a sponsored direct reporting NFFE are more limited than the certification requirements of a sponsoring entity of a sponsored FFI because the obligations of a sponsoring entity of a sponsored direct reporting NFFE are more limited than those of a sponsoring entity of a sponsored FFI. A sponsoring entity of a sponsored direct reporting NFFE must certify that it meets the requirements of a sponsoring entity, that it has a written sponsorship agreement that meets the requirements in these proposed regulations in effect with each sponsored direct reporting NFFE, that there have been no events of default (or that such events have been remediated), and that the sponsoring entity has corrected any failures to

report on Form 8966, “FATCA Report,” with respect to any sponsored direct reporting NFFE.

In general, a sponsoring entity must make the periodic certification with respect to all sponsored direct reporting NFFEs for which it acts during the certification period. However, with respect to a certification period, a sponsoring entity is not required to certify for a sponsored direct reporting NFFE that first agrees to be sponsored by the sponsoring entity during the six month period prior to the end of the certification period, provided that the sponsoring entity makes certifications for such sponsored direct reporting NFFE for subsequent certification periods and the first such certification covers both the subsequent certification period and the portion of the prior certification period during which the sponsored direct reporting NFFE was sponsored by the sponsoring entity. However, the preceding sentence does not apply to a sponsored direct reporting NFFE that, immediately before the NFFE agrees to be sponsored by the sponsoring entity, was a direct reporting NFFE or sponsored direct reporting NFFE of another sponsoring entity. The sponsoring entity may certify for a sponsored direct reporting NFFE described in the preceding sentence for the portion of the certification period prior to the date that the NFFE first agrees to be sponsored by the sponsoring entity if the sponsoring entity obtains from the NFFE (or the NFFE’s sponsoring entity, if applicable) a written certification that the NFFE has complied with its applicable chapter 4 requirements during such portion of the certification period, provided that: (1) the sponsoring entity does not know that such certification is unreliable or incorrect; and (2) the certification for the sponsored direct reporting NFFE for the subsequent certification period covers both the subsequent certification period and the portion of the prior

certification period during which such NFFE was sponsored by the sponsoring entity. The first certification period will begin on the later of the date the sponsoring entity is issued a GIIN to act as a sponsoring entity or June 30, 2014.

Under these proposed regulations, the IRS may make inquiries to a sponsoring entity to determine the sponsoring entity's compliance with its requirements. The IRS may also request any additional information from the sponsoring entity (including a copy of the sponsorship agreement that the sponsoring entity has entered into with each sponsored direct reporting NFFE). If the IRS determines that the sponsoring entity may not have substantially complied with the requirements of a sponsoring entity with respect to any sponsored direct reporting NFFE for which it acts, the IRS may request additional information to verify the sponsoring entity's compliance with such requirements and may request the performance of specified review procedures.

These proposed regulations also specify the events of default and termination procedures applicable to a sponsoring entity of a sponsored direct reporting NFFE. Consistent with the verification requirements for direct reporting NFFEs in the chapter 4 regulations, a notice of default is triggered by an event of default. An event of default may result in the termination of the sponsoring entity's status as a sponsoring entity, the statuses of one or more sponsored direct reporting NFFEs as such, or both the status of a sponsoring entity and the statuses of one or more sponsored direct reporting NFFEs. A sponsored direct reporting NFFE whose sponsoring entity's status is terminated may register on the FATCA registration website as a direct reporting NFFE or sponsored direct reporting NFFE, unless the sponsored direct reporting NFFE's status is also

terminated, in which case the sponsored direct reporting NFFE must obtain prior written approval from the IRS in order to register.

IV. Modifications to the Verification Requirements for Participating FFIs and Compliance FIs

These proposed regulations provide that the requirements for a participating FFI's certification of compliance (described in §1.1471-4(f)(3)) may be modified through an amendment to the FFI agreement to include additional certifications or information (such as quantitative or factual information related to the FFI's compliance with the FFI agreement), provided that any additional information or certifications required are published at least 90 days before being added to the FFI agreement to allow for public comment. See also section 12.02 of the FFI agreement (covering modifications to the FFI agreement imposing additional requirements on participating FFIs). Additionally, any such amendment to the FFI agreement will be published only after these proposed regulations are published as final regulations.

These proposed regulations modify the procedures and timeframes for notices of default and terminations applicable to participating FFIs in the chapter 4 regulations to conform to the procedures and timeframes for sponsoring entities in these proposed regulations. These proposed regulations include a minimum period of 45 days for a participating FFI to respond to a notice of default. Within 30 days of a termination of an FFI's participating FFI status, the FFI must send a notice of termination to each withholding agent from which the FFI receives payments and each financial institution with which it holds an account to which a withholding certificate or other documentation was provided. Requests for reconsideration of a notice of default or a notice of

termination must be made within 90 days of the notice of default or notice of termination (as applicable). An FFI that has had its participating FFI status terminated may not reregister on the FATCA registration website as a participating FFI or a registered deemed-compliant FFI unless it receives written approval from the IRS.

The chapter 4 regulations provide that when an FFI elects to be part of a consolidated compliance program (electing FFI), each branch that it maintains (including a limited branch or a branch described in §1.1471-5(f)(1)) must be subject to periodic review as part of such program. These proposed regulations clarify that a branch of an electing FFI located in a Model 1 IGA jurisdiction is excluded from the periodic review. In addition, these proposed regulations clarify that the responsible officer of the compliance FI must make the periodic certification described in §1.1471-4(f)(3) (or a qualified certification) on the form and in the manner prescribed by the IRS. In general, the certification must be made on behalf of all electing FFIs in the compliance group during the certification period. However, with respect to a certification period, a compliance FI is not required to make a certification for an electing FFI that first elects to be part of the consolidated compliance program of the compliance FI during the six month period prior to the end of the certification period, provided that the compliance FI makes certifications for such electing FFI for subsequent certification periods, and the first such certification covers both the subsequent certification period and the portion of the prior certification period during which such FFI was an electing FFI in the consolidated compliance program of the compliance FI. However, the preceding sentence does not apply to an electing FFI that, immediately before the electing FFI elects to be part of the consolidated compliance program, was a

participating FFI or registered deemed-compliant FFI. The compliance FI may certify for an electing FFI described in the preceding sentence for the portion of the certification period prior to the date that the electing FFI elects to be part of the consolidated compliance program if the compliance FI obtains from the FFI (or the FFI's former compliance FI, if applicable) a written certification that the FFI has complied with its applicable chapter 4 requirements during such portion of the certification period, provided that: (1) the compliance FI does not know that such certification is unreliable or incorrect; and (2) the certification for the electing FFI for the subsequent certification period covers both the subsequent certification period and the portion of the prior certification period during which such FFI was an electing FFI in the consolidated compliance program of the compliance FI. The first certification period for a compliance group begins on the later of the date the compliance FI is issued a GIIN or June 30, 2014, and ends at the close of the third full calendar year following such date. Each subsequent certification period is the three calendar year period following the previous certification period.

These proposed regulations provide that the responsible officer of a compliance FI must make the certification described in §1.1471-4(c)(7) (preexisting account certification of a participating FFI) with respect to each electing FFI that elects to be part of the consolidated compliance program under the compliance FI during the certification period (as defined in §1.1471-4(f)(3)(i)). Notwithstanding the preceding sentence, a preexisting account certification is not required for an electing FFI if, immediately before electing to be part of the consolidated compliance program under the compliance FI, the FFI was a participating FFI or a registered deemed-compliant FFI that is a local FFI or

restricted fund, and the FFI (or the FFI's former compliance FI, if applicable) provides a written certification to the compliance FI that the FFI has made the preexisting account certification required of it, unless the compliance FI knows that such certification is unreliable or incorrect. In addition, a preexisting account certification is not required for a certification period for an electing FFI that elects to be part of the consolidated compliance program under the compliance FI during the two year period prior to the end of such certification period, provided that the compliance FI makes the preexisting account certification for such FFI by the due date of the certification of compliance for the subsequent certification period. The preexisting account certification, if required for a certification period, must be submitted by the due date of the FFI's periodic certification of compliance for the certification period, on the form and in the manner prescribed by the IRS.

V. Certification and Verification Requirements for Registered Deemed-Compliant FFIs

The chapter 4 regulations do not explicitly provide that the IRS may apply verification procedures and make inquiries regarding the certifications provided by registered deemed-compliant FFIs. These proposed regulations provide that the IRS may make inquiries of, and request additional information from and the performance of specified review procedures by, a registered deemed-compliant FFI to verify the FFI's compliance with the requirements of its applicable deemed-compliant status. These requirements are similar to the provisions for the IRS's verification of a participating FFI's compliance with the FFI agreement. If the IRS determines that a registered deemed-compliant FFI has not complied with the requirements of the deemed-compliant

status claimed by the FFI, the IRS may terminate the FFI's deemed-compliant status. A registered deemed-compliant FFI that has had its status terminated may request reconsideration of the termination by submitting a written request to the IRS within 90 days of the notice of termination.

Proposed Effective/Applicability Dates

These proposed regulations apply on the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required.

The IRS intends that the information collection requirements in these proposed regulations will be satisfied by submitting certifications to the IRS electronically. For purposes of the Paperwork Reduction Act, the reporting burden associated with the collection of information in these proposed regulations will be reflected in the OMB Form 83–1, Paperwork Reduction Act Submission, associated with the certification.

It is hereby certified that the collection of information requirement in these proposed regulations will not have a significant economic impact on a substantial number of small entities because these proposed regulations affect foreign persons, not domestic entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the “Addresses” heading. The Treasury Department and IRS request comments on all aspects of the proposed rules, including comments on the clarity of the proposed rules and how they could be made easier with which to comply. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Kamela Nelan, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1 - INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1471-1 is amended by revising paragraphs (b)(99), (b)(116), and (b)(121) to read as follows:

§1.1471-1 Scope of chapter 4 and definitions.

* * * * *

(b) * * *

(99) [The text of proposed §1.1471-1(b)(99) is the same as the text of §1.1471-1T(b)(99) published elsewhere in this issue of the **Federal Register**].

* * * * *

(116) Responsible officer. The term responsible officer means, with respect to a participating FFI, an officer of any participating FFI or reporting Model 1 FFI in the participating FFI's expanded affiliated group with sufficient authority to fulfill the duties of a responsible officer described in §1.1471-4, which include the requirement to periodically certify to the IRS regarding the FFI's compliance with its FFI agreement. The term responsible officer means, in the case of a registered deemed-compliant FFI, an officer of any deemed-compliant FFI or participating FFI in the deemed-compliant FFI's expanded affiliated group with sufficient authority to ensure that the FFI meets the applicable requirements of §1.1471-5(f). The term responsible officer means, with respect to a sponsoring entity, an officer of the sponsoring entity with sufficient authority to fulfill the duties of a responsible officer described in §1.1471-5(j) or §1.1472-1(f) (as applicable). If a participating FFI elects to be part of a consolidated compliance program, the term responsible officer means an officer of the compliance FI (as described in §1.1471-4(f)) with sufficient authority to fulfill the duties of a responsible officer described in §1.1471-4(f)(2) and (3) on behalf of each FFI in the compliance group.

* * * * *

(121) Sponsored FFI. The term sponsored FFI means any entity described in §1.1471-5(f)(1)(i)(F) (describing sponsored investment entities and sponsored controlled foreign corporations) or §1.1471-5(f)(2)(iii) (describing sponsored, closely held investment vehicles). The term sponsored FFI also means a sponsored investment entity, a sponsored controlled foreign corporation, or a sponsored, closely held investment vehicle treated as deemed-compliant under an applicable Model 2 IGA.

* * * * *

Par. 3. Section 1.1471-3 is amended by:

1. Revising paragraph (c)(1).
2. Adding paragraphs (c)(3)(iii)(B)(5) and (c)(6)(ii)(E)(4).
3. Revising paragraphs (c)(7)(ii) and (d)(6)(i)(F).

The revisions and additions read as follows:

§1.1471-3 Identification of payee.

* * * * *

(c) * * *

(1) [The text of proposed §1.1471-3(c)(1) is the same as the text of §1.1471-3T(c)(1) published elsewhere in this issue of the **Federal Register**].

* * * * *

(3) * * *

(iii) * * *

(B) * * *

(5) [The text of proposed §1.1471-3(c)(3)(iii)(B)(5) is the same as the text of §1.1471-3T(c)(3)(iii)(B)(5) published elsewhere in this issue of the **Federal Register**].

* * * * *

(6) * * *

(ii) * * *

(E) * * *

(4) [The text of proposed §1.1471-3(c)(6)(ii)(E)(4) is the same as the text of §1.1471-3T(c)(6)(ii)(E)(4) published elsewhere in this issue of the **Federal Register**].

* * * * *

(7) * * *

(ii) [The text of proposed §1.1471-3(c)(7)(ii) is the same as the text of §1.1471-3T(c)(7)(ii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(d) * * *

(6) * * *

(i) * * *

(F) [The text of proposed §1.1471-3(d)(6)(i)(F) is the same as the text of §1.1471-3T(d)(6)(i)(F) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 4. Section 1.1471-4 is amended by:

1. Revising paragraphs (c)(2)(ii)(B)(2)(iii), (d)(4)(iv)(C) and (D), (f)(2)(ii)(A), (f)(3)(i), and (g)(2).

2. Adding paragraphs (d)(2)(ii)(G) and (f)(2)(ii)(B)(1) and (2).

The revisions and additions read as follows:

§1.1471-4 FFI agreement.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) * * *

(2) * * *

(iii) [The text of proposed §1.1471-4(c)(2)(ii)(B)(2)(iii) is the same as the text of §1.1471-4T(c)(2)(ii)(B)(2)(iii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(G) [The text of proposed §1.1471-4(d)(2)(ii)(G) is the same as the text of §1.1471-4T(d)(2)(ii)(G) published elsewhere in this issue of the **Federal Register**].

* * * * *

(4) * * *

(iv) * * *

(C) [The text of proposed §1.1471-4(d)(4)(iv)(C) is the same as the text of §1.1471-4T(d)(4)(iv)(C) published elsewhere in this issue of the **Federal Register**].

(D) [The text of proposed §1.1471-4(d)(4)(iv)(D) is the same as the text of §1.1471-4T(d)(4)(iv)(D) published elsewhere in this issue of the **Federal Register**].

* * * * *

(f) * * *

(2) * * *

(ii) * * *

(A) In general. A participating FFI that is a member of an expanded affiliated group that includes one or more FFIs may elect to be part of a consolidated compliance program (and perform a consolidated periodic review) under the authority of a participating FFI, reporting Model 1 FFI, or U.S. financial institution (compliance FI) that is a member of the electing FFI's expanded affiliated group, regardless of whether all such members so elect. In addition, when an FFI elects to be part of a consolidated compliance program, each branch that it maintains (including a limited branch or a branch described in §1.1471-5(f)(1)), other than a branch located in a Model 1 IGA jurisdiction, must be subject to periodic review as part of such program and included on the periodic certification (described in paragraph (f)(2)(ii)(B)(1) of this section). See §1.1471-5(j) for the requirement of a sponsoring entity to establish and implement a compliance program for its sponsored FFIs.

(B) * * *

(1) Periodic certification. On or before July 1 of the calendar year following the end of the certification period, the responsible officer of the compliance FI must make the certification described in either paragraph (f)(3)(ii) or (f)(3)(iii) of this section with respect to all electing FFIs for which it acts during the certification period on the form and in the manner prescribed by the IRS. The certification must be made on behalf of all electing FFIs in the compliance group during the certification period. In general, with respect to a certification period, a compliance FI is not required to make a certification for an electing FFI that first elects to be part of the consolidated compliance program of

the compliance FI during the six month period prior to the end of the certification period, provided that the compliance FI makes certifications for such electing FFI for subsequent certification periods, and the first such certification covers both the subsequent certification period and the portion of the prior certification period during which such FFI was an electing FFI in the consolidated compliance program of the compliance FI. However, the preceding sentence does not apply to an electing FFI that, immediately before the electing FFI elects to be part of the consolidated compliance program, was a participating FFI or registered deemed-compliant FFI. The compliance FI may certify for an electing FFI described in the preceding sentence for the portion of the certification period prior to the date that the electing FFI elects to be part of the consolidated compliance program if the compliance FI obtains from the FFI (or the FFI's former compliance FI, if applicable) a written certification that the FFI has complied with its applicable chapter 4 requirements during such portion of the certification period, provided that: (1) the compliance FI does not know that such certification is unreliable or incorrect; and (2) the certification for the electing FFI for the subsequent certification period covers both the subsequent certification period and the portion of the prior certification period during which such FFI was an electing FFI in the consolidated compliance program of the compliance FI. The first certification period for a compliance group begins on the later of the date the compliance FI is issued a GIIN or June 30, 2014, and ends at the close of the third full calendar year following such date. Each subsequent certification period is the three calendar year period following the previous certification period.

(2) Preexisting account certification. The responsible officer of a compliance FI must make the certification described in paragraph (c)(7) of this section (preexisting account certification of a participating FFI) with respect to each electing FFI that elects to be part of the consolidated compliance program under the compliance FI during the certification period. However, a preexisting account certification is not required for an electing FFI if immediately before electing to be part of the consolidated compliance program under the compliance FI the FFI was a participating FFI or a registered deemed-compliant FFI that is a local FFI or restricted fund, and the FFI (or the FFI's former compliance FI, if applicable) provides a written certification to the compliance FI that the FFI has made the preexisting account certification required under paragraph (c)(7) of this section, §1.1471-5(f)(1)(i)(A)(7), or §1.1471-5(f)(1)(i)(D)(6) (as applicable), unless the compliance FI knows that such written certification is unreliable or incorrect. In addition, a preexisting account certification is not required for an electing FFI that elects to be part of the consolidated compliance program under the compliance FI during the two year period prior to the end of the certification period, provided that the compliance FI makes the preexisting account certification for such FFI for the subsequent certification period. The certification required under this paragraph (f)(2)(ii)(B)(2) for the certification period must be submitted by the due date of the FFI's certification of compliance required under paragraph (f)(2)(ii)(B)(1) of this section for the certification period, on the form and in the manner prescribed by the IRS.

(3) * * *

(i) In general. In addition to the certifications required under paragraph (c)(7) of this section, on or before July 1 of the calendar year following the end of each

certification period, the responsible officer must make the certification described in either paragraph (f)(3)(ii) or (iii) of this section on the form and in the manner prescribed by the IRS. The first certification period begins on the effective date of the FFI agreement and ends at the close of the third full calendar year following the effective date of the FFI agreement. Each subsequent certification period is the three calendar year period following the previous certification period, unless the FFI agreement provides for a different period. The responsible officer must either certify that the participating FFI maintains effective internal controls or, if the participating FFI has identified an event of default (defined in paragraph (g) of this section) or a material failure (defined in paragraph (f)(3)(iv) of this section) that it has not corrected as of the date of the certification, must make the qualified certification described in paragraph (f)(3)(iii) of this section. The certification of compliance described in paragraph (f)(3)(ii) or (iii) of this section may be modified through an amendment to the FFI agreement to include any additional certifications or information (such as quantitative or factual information related to the FFI's compliance with the FFI agreement), provided that any additional information or certifications are published at least 90 days before being incorporated into the FFI agreement to allow for public comment.

* * * * *

(g) * * *

(2) Notice of event of default. Following an event of default known by or disclosed to the IRS, the IRS will deliver to the participating FFI a notice of default specifying the event of default. The IRS will request that the participating FFI remediate the event of default within 45 days (unless additional time is requested and agreed to by the IRS).

The participating FFI must respond to the notice of default and provide information responsive to an IRS request for information or state the reasons why the participating FFI does not agree that an event of default has occurred. Taking into account the terms of any applicable Model 2 IGA, if the participating FFI does not provide a response within the specified time period, the IRS may, at its sole discretion, deliver a notice of termination that terminates the FFI's participating FFI status. If the FFI's participating FFI status is terminated, in addition to the requirements in §1.1471-3(c)(6)(ii)(E)(2), the FFI must, within 30 days of the termination, send notice of the termination to each withholding agent from which it receives payments and each financial institution with which it holds an account for which a withholding certificate or other documentation was provided. An FFI that has had its participating FFI status terminated may not reregister on the FATCA registration website as a participating FFI or registered deemed-compliant FFI unless it receives written approval from the IRS to register. A participating FFI may request, within 90 days of a notice of default or notice of termination, reconsideration of a notice of default or notice of termination by written request to the IRS.

* * * * *

Par. 5. Section 1.1471-5 is amended by:

1. Revising paragraph (f)(1)(i)(F)(3)(vi).
2. Removing paragraph (f)(1)(i)(F)(3)(vii).
3. Redesignating paragraph (f)(1)(i)(F)(3)(viii) as new paragraph (f)(1)(i)(F)(3)(vii),
4. Revising paragraph (f)(1)(i)(F)(4).

5. Adding paragraph (f)(1)(iv).
6. Revising paragraph (f)(2)(iii)(D)(4).
7. Removing paragraph (f)(2)(iii)(D)(5).
8. Redesignating paragraph (f)(2)(iii)(D)(6) as new paragraph (f)(2)(iii)(D)(5).
9. Revising paragraph (f)(2)(iii)(E),
10. Revising paragraphs (j) and (k).
11. Redesignating paragraph (l) as paragraph (m).
12. Adding new paragraph (l).

The revisions and additions read as follows:

§1.1471-5 Definitions applicable to section 1471.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(F) * * *

(3) * * *

(vi) Complies with the verification procedures described in paragraph (j) of this section;

* * * * *

(4) The IRS may revoke a sponsoring entity's status with respect to one or more sponsored FFIs if there is an event of default as defined in paragraph (k)(1) of this section and following the termination procedures described in paragraphs (k)(2), (k)(3), and (k)(4) of this section.

* * * * *

(iv) IRS review of compliance by registered deemed-compliant FFIs--(A) General inquiries. With respect to a registered deemed-compliant FFI described in paragraph (f)(1)(i)(A), (C), or (D) of this section, the IRS, based upon the information reporting forms described in §1.1471-4(d)(3)(v), (d)(5)(vii), or (d)(6)(iv) filed with the IRS for each calendar year (if applicable), may request additional information with respect to the information reported (or required to be reported) on the forms, the account statements described in §1.1471-4(d)(4)(v), or to confirm that the FFI has no reporting requirements for the calendar year. The IRS may request additional information from the FFI to determine the FFI's compliance with §1.1471-4 (if applicable) and to assist the IRS with its review of account holder compliance with tax reporting requirements. For IRS review of compliance with respect to a registered deemed-compliant FFI described in paragraph (f)(1)(i)(F) of this section (describing sponsored investment entities and controlled foreign corporations), see paragraph (j)(4) of this section.

(B) Inquiries regarding substantial non-compliance. With respect to a registered deemed-compliant FFI described in paragraph (f)(1)(i)(A) through (E) of this section, the IRS, based on the information reporting forms described in §1.1471-4(d)(3)(v), (d)(5)(vii), or (d)(6)(iv) filed with the IRS for each calendar year (if applicable), the certifications made by the responsible officer described in paragraph (f)(1)(ii)(B) of this section (or the absence of such certifications), or any other information related to the FFI's compliance with the requirements of the deemed-compliant status claimed by the FFI, may determine in its discretion that the FFI may not have substantially complied with the requirements of the deemed-compliant status claimed by the FFI. In such a

case, the IRS may request from the responsible officer (or designee) information necessary to verify the FFI's compliance with the requirements for the deemed-compliant status claimed by the FFI. For example, in the case of a local FFI under paragraph (f)(1)(i)(A) of this section, the IRS may request a description or copy of the FFI's policies and procedures for identifying accounts held by specified U.S. persons not resident in the jurisdiction in which the FFI is incorporated or organized, identifying entities controlled or beneficially owned by such persons, and identifying nonparticipating FFIs. The IRS may also request the performance of specified review procedures by a person (including an external auditor or third-party consultant) that the IRS identifies as competent to perform such procedures given the facts and circumstances surrounding the FFI's potential failure to comply with the requirements of the deemed-compliant category claimed by the FFI. If the IRS determines that the FFI has not complied with the requirements of the deemed-compliant status claimed by the FFI, the IRS may terminate the FFI's deemed-compliant status. If the FFI's deemed-compliant status is terminated, the FFI must send notice of the termination to each withholding agent from which it receives payments and each financial institution with which it holds an account for which a withholding certificate or other documentation was provided within 30 days after the termination. An FFI that has had its deemed-compliant status terminated may not reregister on the FATCA registration website as a registered deemed-compliant FFI or register on the FATCA registration website as a participating FFI unless it receives written approval from the IRS. A registered deemed-compliant FFI may request, within 90 days of a notice of termination, reconsideration of the notice of termination by written request to the IRS.

(2) * * *

(iii) * * *

(D) * * *

(4) Complies with the verification procedures described in paragraph (j) of this section; and

* * * * *

(E) The IRS may revoke a sponsoring entity's status as a sponsoring entity with respect to one or more sponsored FFIs if there is an event of default as defined in paragraph (k)(1) of this section and following the termination procedures described in paragraphs (k)(2), (k)(3), and (k)(4) of this section. A sponsoring entity is not liable for any failure to comply with the obligations contained in paragraph (f)(2)(iii)(D) of this section unless the sponsoring entity is a withholding agent that is separately liable for the failure to withhold on or report with respect to a payment made by the sponsoring entity on behalf of the sponsored FFI. A sponsored FFI will remain liable for any failure of its sponsoring entity to comply with the obligations contained in paragraph (f)(2)(iii)(D) of this section that the sponsoring entity has agreed to undertake on behalf of the FFI, even if the sponsoring entity is also a withholding agent and is itself separately liable for the failure to withhold on or report with respect to a payment made by the sponsoring entity on behalf of the sponsored FFI. The same tax, interest, or penalties, however, shall not be collected more than once.

* * * * *

(j) Sponsoring entity verification--(1) In general. This paragraph (j) describes the requirements for a sponsoring entity of a sponsored FFI to establish and implement a

compliance program for satisfying its requirements as a sponsoring entity and to provide a certification of compliance with its requirements. This paragraph (j) also describes the procedures for the IRS to review the sponsoring entity's compliance with respect to each sponsored FFI for purposes of satisfying the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA. This paragraph (j) also requires a sponsoring entity to have in place a written sponsorship agreement as described in paragraph (j)(3)(v)(B) of this section with each sponsored FFI. References in this paragraph (j) or paragraph (k) of this section to a sponsored FFI mean a sponsored FFI to which the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA apply.

(2) Compliance program. The sponsoring entity must appoint a responsible officer to oversee the compliance of the sponsoring entity with respect to each sponsored FFI for purposes of satisfying the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA. The responsible officer must (either personally or through designated persons) establish a compliance program that includes policies, procedures, and processes sufficient for the sponsoring entity to satisfy the requirements described in the preceding sentence. The responsible officer (or designee) must periodically review the sufficiency of the sponsoring entity's compliance program, the sponsoring entity's compliance with respect to each sponsored FFI for purposes of satisfying the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA, and the compliance of each sponsored FFI with the due diligence, withholding, and reporting requirements of §1.1471-4 or an applicable Model 2 IGA during the certification period described in

paragraph (j)(3)(iii) of this section. The results of the periodic review must be considered by the responsible officer in making the periodic certifications described in paragraph (j)(3) of this section.

(3) Certification of compliance--(i) In general. In addition to the certification required under paragraph (j)(5) of this section (preexisting account certification), on or before July 1 of the calendar year following the certification period, the responsible officer of the sponsoring entity must make the certification described in paragraph (j)(3)(v) of this section and either the certification described in paragraph (j)(3)(vi)(A) of this section or the certification described in paragraph (j)(3)(vi)(B) of this section with respect to all sponsored FFIs for which the sponsoring entity acts during the certification period on the form and in the manner prescribed by the IRS.

(ii) Late-joining sponsored FFIs. In general, with respect to a certification period, a sponsoring entity is not required to make a certification for a sponsored FFI that first agrees to be sponsored by the sponsoring entity during the six month period prior to the end of the certification period, provided that the sponsoring entity makes certifications for such sponsored FFI for subsequent certification periods and the first such certification covers both the subsequent certification period and the portion of the prior certification period during which such FFI was sponsored by the sponsoring entity. However, the preceding sentence does not apply to a sponsored FFI that, immediately before the FFI agrees to be sponsored by the sponsoring entity, was a participating FFI, registered deemed-compliant FFI, or sponsored, closely held investment vehicle of another sponsoring entity. The sponsoring entity may certify for a sponsored FFI described in the preceding sentence for the portion of the certification period prior to the

date that the FFI first agrees to be sponsored by the sponsoring entity if the sponsoring entity obtains from the FFI (or the FFI's sponsoring entity, if applicable) a written certification that the FFI has complied with its applicable chapter 4 requirements during such portion of the certification period, provided that: (1) the sponsoring entity does not know that such certification is unreliable or incorrect; and (2) the certification for the sponsored FFI for the subsequent certification period covers both the subsequent certification period and the portion of the prior certification period during which such FFI was sponsored by the sponsoring entity.

(iii) Certification period. The first certification period begins on the later of the date the sponsoring entity is issued a GIIN to act as a sponsoring entity or June 30, 2014, and ends at the close of the third full calendar year following such date. Each subsequent certification period is the three calendar year period following the previous certification period.

(iv) Additional certifications or information. The certification of compliance described in paragraph (j)(3) of this section may be modified to include additional certifications or information (such as quantitative or factual information related to the sponsoring entity's compliance with respect to each sponsored FFI for purposes of satisfying the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA), provided that such additional information or certifications are published at least 90 days before being made effective in order to allow for public comment.

(v) Certifications regarding sponsoring entity and sponsored FFI requirements. The responsible officer of the sponsoring entity must certify to the following statements--

(A) The sponsoring entity meets all of the requirements of a sponsoring entity as described in paragraph (f)(1)(i)(F)(3) or (f)(2)(iii)(D) of this section or an applicable Model 2 IGA, including the chapter 4 status required of such entity;

(B) The sponsoring entity has a written sponsorship agreement in effect with each sponsored FFI authorizing the sponsoring entity to fulfill the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA with respect to each sponsored FFI; and

(C) Each sponsored FFI treated as a sponsored investment entity, a sponsored controlled foreign corporation, or a sponsored, closely held investment vehicle by the sponsoring entity meets the requirements of its respective status.

(vi) Certifications regarding internal controls-- (A) Certification of effective internal controls. The responsible officer of the sponsoring entity must certify to the following statements--

(1) The responsible officer of the sponsoring entity has established a compliance program that is in effect as of the date of the certification and that has been subject to the review as described in paragraph (j)(2) of this section;

(2) With respect to material failures (defined in paragraph (j)(3)(vii) of this section)--

(i) There are no material failures for the certification period; or

(ii) If there were any material failures, appropriate actions were taken to remediate such failures and to prevent such failures from reoccurring; and

(3) With respect to any failure to withhold, deposit, or report to the extent required under §1.1471-4 or an applicable Model 2 IGA with respect to any sponsored FFI for

any year during the certification period, the sponsored FFI has corrected such failure by paying (or directing the sponsoring entity to pay) any taxes due (including interest and penalties) and filing (or directing the sponsoring entity to file) the appropriate return (or amended return).

(B) Qualified certification. If the responsible officer of the sponsoring entity has identified an event of default (defined in paragraph (k)(1) of this section) or a material failure (defined in paragraph (j)(3)(vii) of this section) that the sponsoring entity has not corrected as of the date of the certification, the responsible officer must certify to the following statements--

(1) The responsible officer of the sponsoring entity has established a compliance program that is in effect as of the date of the certification and that has been subjected to the review as described in paragraph (j)(2) of this section;

(2) With respect to the event of default or material failure--

(i) The responsible officer (or designee) has identified an event of default; or

(ii) The responsible officer has determined that there are one or more material failures as defined in paragraph (j)(3)(vii) of this section and that appropriate actions will be taken to prevent such failures from reoccurring;

(3) With respect to any failure to withhold, deposit, or report to the extent required under §1.1471-4 or an applicable Model 2 IGA with respect to any sponsored FFI for any year during the certification period, the sponsored FFI will correct such failure by paying (or directing the sponsoring entity to pay) any taxes due (including interest and penalties) and filing (or directing the sponsoring entity to file) the appropriate return (or amended return); and

(4) The responsible officer (or designee) will respond to any notice of default under paragraph (k)(2) of this section or will provide to the IRS a description of each material failure and a written plan to correct each such failure when requested under paragraph (j)(4) of this section.

(vii) Material failures defined. A material failure is a failure of the sponsoring entity with respect to each sponsored FFI to satisfy the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA if the failure was the result of a deliberate action on the part of one or more employees of the sponsoring entity or was an error attributable to a failure of the sponsoring entity to implement internal controls sufficient for the sponsoring entity to meet its requirements. A material failure will not constitute an event of default unless such material failure occurs in more than limited circumstances when a sponsoring entity has not substantially complied with the requirements described in the preceding sentence. Material failures include the following--

(A) With respect to any sponsored FFI, the deliberate or systematic failure of the sponsoring entity to report accounts that such sponsored FFI was required to treat as U.S. accounts, withhold on passthru payments to the extent required, deposit taxes withheld to the extent required, accurately report recalcitrant account holders (or non-consenting U.S. accounts under an applicable Model 2 IGA), or accurately report with respect to nonparticipating FFIs as required under §1.1471-4(d)(2)(ii)(F) or an applicable Model 2 IGA;

(B) A criminal or civil penalty or sanction imposed on the sponsoring entity or any sponsored FFI (or any branch or office of the sponsoring entity or any sponsored FFI)

by a regulator or other governmental authority or agency with oversight over the sponsoring entity's or sponsored FFI's compliance with the AML due diligence procedures to which it (or any branch or office thereof) is subject and that is imposed based on a failure to properly identify account holders under the requirements of those procedures;

(C) A potential future tax liability of any sponsored FFI related to its compliance (or lack thereof) with the due diligence, withholding, and reporting requirements of §1.1471-4 or an applicable Model 2 IGA for which such sponsored FFI has established, for financial statement purposes, a tax reserve or provision;

(D) A potential contractual liability under the agreement described in paragraph (j)(3)(v)(B) of this section of the sponsoring entity to any sponsored FFI related to such sponsoring entity's compliance (or lack thereof) with paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA for which the sponsoring entity has established, for financial statement purposes, a reserve or provision; and

(E) Failure to register with the IRS as a sponsoring entity or to register each sponsored FFI required to be registered under paragraph (f)(1)(i)(F)(3)(iii) of this section or an applicable Model 2 IGA.

(4) IRS review of compliance--(i) General inquiries. The IRS, based upon the information reporting forms described in §1.1471-4(d)(3)(v), (d)(5)(vii), or (d)(6)(iv) filed with the IRS (or the absence of such reporting) by the sponsoring entity for each calendar year with respect to any sponsoring FFI, may request additional information with respect to the information reported (or required to be reported) on the forms, the account statements described in §1.1471-4(d)(4)(v) with respect to one or more

sponsored FFIs, or confirmation that the FFI has no reporting requirements. The IRS may also request any additional information from the sponsoring entity (including a copy of each sponsorship agreement the sponsoring entity has entered into with each sponsored FFI) necessary to determine the compliance with the due diligence, withholding, and reporting requirements of §1.1471-4 or an applicable Model 2 IGA with respect to each sponsored FFI and to assist the IRS with its review of account holder compliance with tax reporting requirements.

(ii) Inquiries regarding substantial non-compliance. Based on the information reporting forms described in §1.1471-4(d)(3)(v), (d)(5)(vii), or (d)(6)(iv) filed with the IRS by the sponsoring entity for each calendar year with respect to any sponsored FFI (or the absence of reporting), the certifications made by the responsible officer described in paragraphs (j)(3) and (j)(5) of this section (or the absence of such certifications), or any other information related to the sponsoring entity's compliance with respect to any sponsored FFI for purposes of satisfying the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA, the IRS may determine in its discretion that the sponsoring entity may not have substantially complied with such requirements. In such a case, the IRS may request from the responsible officer (or designee) information necessary to verify the sponsoring entity's compliance with such requirements. The IRS may request, for example, a description or copy of the sponsoring entity's policies and procedures for fulfilling the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA, a description or copy of the sponsoring entity's procedures for conducting its periodic review, or a copy of any written reports documenting the findings of such review. The IRS may also request the

performance of specified review procedures by a person (including an external auditor or third-party consultant) that the IRS identifies as competent to perform such procedures given the facts and circumstances surrounding the sponsoring entity's potential failure to comply with respect to each sponsored FFI with the requirements of paragraph (f)(1)(i)(F) or (f)(2)(iii) of this section or an applicable Model 2 IGA.

(iii) Compliance procedures for a sponsored FFI subject to a Model 2 IGA. In the case of a sponsored FFI subject to the requirements of an applicable Model 2 IGA, the procedures described in paragraph (j)(4) of this section apply, except as otherwise provided in the applicable Model 2 IGA.

(5) Preexisting account certification. The responsible officer of a sponsoring entity must make the certification described in §1.1471-4(c)(7) (preexisting account certification of a participating FFI) with respect to each sponsored FFI that enters into the sponsorship agreement with the sponsoring entity during the certification period (as defined in paragraph (j)(3)(iii) of this section). However, the preexisting account certification is not required for a sponsored FFI that, immediately before the FFI first agrees to be sponsored by the sponsoring entity, was a participating FFI, a sponsored FFI of another sponsoring entity, or a registered deemed-compliant FFI that is a local FFI or a restricted fund, if the FFI (or the FFI's former sponsoring entity, if applicable) provides a written certification to the sponsoring entity that the FFI has made the preexisting account certification required under §1.1471-4(c)(7) or paragraph (f)(1)(i)(A)(7) or (f)(1)(i)(D)(6) of this section (as applicable), unless the sponsoring entity knows that such written certification is unreliable or incorrect. In addition, the preexisting account certification is not required for a sponsored FFI that enters into the

sponsorship agreement with the sponsoring entity during the two year period prior to the end of the certification period, provided that the sponsoring entity makes the preexisting account certification for such FFI for the subsequent certification period. The certification described in this paragraph (j)(5) for the certification period must be submitted by the due date of the sponsoring entity's certification of compliance required under paragraph (j)(3) of this section for the certification period, on the form and in the manner prescribed by the IRS. With respect to a sponsored FFI for which the sponsoring entity makes a preexisting account certification, a preexisting obligation means any account, instrument, or contract (including any debt or equity interest) maintained, executed, or issued by the sponsored FFI that is outstanding on the earlier of the date the FFI is issued a GIIN as a sponsored FFI or the date the FFI first agrees to be sponsored by the sponsoring entity.

(k) Sponsoring entity event of default--(1) Defined. An event of default with regard to a sponsoring entity occurs if the sponsoring entity fails to perform material obligations required with respect to the due diligence, withholding, and reporting requirements of §1.1471-4 or an applicable Model 2 IGA with respect to any sponsored FFI, to establish or maintain a compliance program as described in paragraph (j)(2) of this section, or to perform a periodic review described in paragraph (j)(2) of this section. An event of default also includes the occurrence of any of the following--

(i) With respect to any sponsored FFI, failure to obtain, in any case in which foreign law would (but for a waiver) prevent the reporting of U.S. accounts required under §1.1471-4(d), valid and effective waivers from holders of U.S. accounts or failure to otherwise close or transfer such U.S. accounts as required under §1.1471-4(i);

(ii) With respect to any sponsored FFI, failure to significantly reduce, over a period of time, the number of account holders or payees that such sponsored FFI is required to treat as recalcitrant account holders or nonparticipating FFIs, as a result of the sponsoring entity failing to comply with the due diligence procedures set forth in §1.1471-4(c);

(iii) With respect to any sponsored FFI, failure to fulfill the requirements of §1.1471-4(i) in any case in which foreign law prevents or otherwise limits withholding under §1.1471-4(b);

(iv) Failure to take timely corrective actions to remedy a material failure described in paragraph (j)(3)(vii) of this section after making a qualified certification described in paragraph (j)(3)(vi)(B) of this section;

(v) Failure to make the preexisting account certification required under paragraph (j)(5) of this section or the periodic certification required under paragraph (j)(3) of this section with respect to any sponsored FFI within the specified time period;

(vi) Making incorrect claims for refund on behalf of any sponsored FFI;

(vii) Failure to cooperate with an IRS request for additional information under paragraph (j)(4) of this section;

(viii) Making any fraudulent statement or misrepresentation of material fact to the IRS or representing to a withholding agent or the IRS its status as a sponsoring entity for an entity other than an entity for which it acts as a sponsoring entity;

(ix) The sponsoring entity is no longer authorized to perform the requirements of a sponsoring entity with respect to one or more sponsored FFIs; or

(x) Failure to have the written sponsorship agreement described in paragraph (j)(3)(v)(B) of this section in effect with each sponsored FFI.

(2) Notice of event of default. Following an event of default known by or disclosed by the sponsoring entity to the IRS, the IRS will deliver to the sponsoring entity a notice of default specifying the event of default and, if applicable, identifying each sponsored FFI to which the notice relates. The IRS will request that the sponsoring entity remediate the event of default within 45 days (unless additional time is requested and agreed to by the IRS). The sponsoring entity must respond to the notice of default and provide information responsive to an IRS request for information or state the reasons why the sponsoring entity does not agree that an event of default has occurred.

(3) Remediation of event of default. A sponsoring entity will be permitted to remediate an event of default to the extent that it agrees with the IRS on a remediation plan. Such a plan may, for example, allow a sponsoring entity to remediate an event of default described in paragraph (k)(1) of this section with respect to a sponsored FFI by providing specific information regarding the U.S. accounts maintained by such sponsored FFI when the sponsoring entity has been unable to report all of the information with respect to such accounts as required under §1.1471-4(d) and has been unable to close or transfer such accounts. The IRS may, as part of a remediation plan, require additional information from the sponsoring entity or the performance of the specified review procedures described in paragraph (j)(4)(ii) of this section.

(4) Termination--(i) In general. If the sponsoring entity does not provide a response to a notice of default within the period specified in paragraph (k)(2) of this section or does not remediate the event of default as described in paragraph (k)(3) of

this section, the IRS may deliver a notice of termination that terminates the sponsoring entity's status, the status of one or more sponsored FFIs as deemed-compliant FFIs, or both the sponsoring entity and one or more sponsored FFIs.

(ii) Termination of sponsoring entity. If the IRS terminates the status of the sponsoring entity, the sponsoring entity must send notice of the termination to each sponsored FFI for which it acts, as well as each withholding agent from which it receives payments and each financial institution with which it holds an account for which a withholding certificate or other documentation was provided with respect to each sponsored FFI within 30 days after the date of termination. A sponsoring entity that has had its status terminated cannot register on the FATCA registration website to act as a sponsoring entity for any sponsored FFI or for any entity that is a sponsored entity under a Model 1 IGA unless it receives written approval from the IRS to register. Unless the status of a sponsored FFI has been terminated, the sponsored FFI may register on the FATCA registration website as a participating FFI or registered deemed-compliant FFI (as applicable). However, a sponsored FFI whose sponsoring entity has been terminated may not register or represent its status as a sponsored FFI of a sponsoring entity that has a relationship described in section 267(b) to the sponsoring entity that was terminated without receiving written approval from the IRS.

(iii) Termination of sponsored FFI. If the IRS notifies the sponsoring entity that the status of a sponsored FFI is terminated (but not the sponsoring entity's status), the sponsoring entity must remove the sponsored FFI from the sponsoring entity's registration account on the FATCA registration website and send notice of the termination to each withholding agent from which the sponsored FFI receives payments

and each financial institution with which it holds an account for which a withholding certificate or other documentation was provided with respect to such sponsored FFI within 30 days after the date of termination. A sponsored FFI that has had its status as a sponsored FFI terminated (independent from a termination of status of its sponsoring entity) may not register on the FATCA registration website as a participating FFI or registered deemed-compliant FFI unless it receives written approval from the IRS.

(iv) Reconsideration of notice of default or notice of termination. A sponsoring entity or sponsored FFI may request, within 90 days of a notice of default or notice of termination, reconsideration of the notice of default or notice of termination by written request to the IRS.

(v) Sponsoring entity of sponsored FFIs subject to a Model 2 IGA. Subject to the provisions of an applicable Model 2 IGA, the IRS may revoke the status of a sponsoring entity with respect to one or more sponsored FFIs subject to a Model 2 IGA if there is an event of default as defined in paragraph (k)(1) of this section and following the notice, remediation, and termination procedures described in paragraphs (k)(2), (k)(3), and (k)(4) of this section.

(l) Trustee-documented trust verification-- (1) Compliance program. A trustee of a trust treated as a trustee-documented trust under an applicable Model 2 IGA must establish and implement a compliance program for purposes of satisfying the requirements of an applicable Model 2 IGA with respect to each such trust. The trustee must appoint a responsible officer who must (either personally or through designated persons) establish policies, procedures, and processes sufficient for the trustee to implement the compliance program. The responsible officer (or designee) must

periodically review the sufficiency of the trustee's compliance program and the trustee's compliance with respect to each trust for purposes of satisfying the requirements of an applicable Model 2 IGA for each certification period described in paragraph (l)(2) of this section. The results of the periodic review must be considered by the responsible officer in making the certification described in paragraph (l)(2) of this section.

(2) Certification of compliance-- (i) In general. On or before July 1 of the calendar year following the end of the certification period, the responsible officer must make a certification for the certification period with respect to all trustee-documented trusts described in paragraph (l)(1) of this section on the form and in the manner prescribed by the IRS.

(ii) Late-joining trustee-documented trusts. In general, with respect to a certification period, the responsible officer of a trustee is not required to make a certification for a trustee-documented trust for which the trustee first agreed to act as the trustee for purposes of the trust's status as a trustee-documented trust during the six month period prior to the end of the certification period, provided that the responsible officer of the trustee makes certifications for such trustee-documented trust for subsequent certification periods and the first such certification covers both the subsequent certification period and the portion of the prior certification period during which the trustee acted as the trustee of the trustee-documented trust. However, the preceding sentence does not apply to a trustee-documented trust that, immediately before the trustee first agrees to act as the trustee for purposes of the trust's status as a trustee-documented trust, was a trustee-documented trust of another trustee. The trustee of a trustee-documented trust may certify for a trustee-documented trust

described in the preceding sentence for the portion of the certification period prior to the date that the trustee first agrees to act as the trustee for purposes of the trust's status as a trustee-documented trust if the trustee obtains from the trustee-documented trust (or the trust's former trustee, if applicable) a written certification that the trust has complied with its applicable chapter 4 requirements during such portion of the certification period, provided that: (1) the trustee does not know that such certification is unreliable or incorrect; and (2) the certification for the trustee-documented trust for the subsequent certification period covers both the subsequent certification period and the portion of the prior certification period during which the trustee acts as the trustee for purposes of the trust's status as a trustee-documented trust.

(iii) Certification period. The first certification period begins on the later of the date the trustee is issued a GIIN to act as a trustee of a trustee-documented trust or June 30, 2014, and ends at the close of the third full calendar year following such date. Each subsequent certification period is the three calendar year period following the previous certification period.

(iv) Certifications. The responsible officer of the trustee must certify to the following statements--

(A) The responsible officer of the trustee has established a compliance program that is in effect as of the date of the certification and has performed a periodic review described in paragraph (l)(1) of this section for the certification period; and

(B) The trustee has reported to the IRS on Form 8966, "FATCA Report" (or such other form as the IRS may prescribe), all of the information required to be reported pursuant to the applicable Model 2 IGA with respect to all U.S. accounts of each

trustee-documented trust for which the trustee acts during the certification period by the due date of Form 8966 (including extensions) for each year.

(3) IRS review of compliance by trustees of trustee-documented trusts-- (i)

General inquiries. Based upon the information reporting forms filed with the IRS (or the absence of such reporting) by a trustee with respect to any trustee-documented trust subject to a Model 2 IGA for each calendar year, and subject to the requirements of an applicable Model 2 IGA, the IRS may request from the trustee additional information with respect to the information reported on the forms with respect to any trustee-documented trust or a confirmation that the trustee has no reporting requirements with respect to any trustee-documented trust. The IRS may also request any additional information to determine the trustee's compliance for purposes of satisfying the trust's requirements as a trustee-documented trust under an applicable Model 2 IGA or to assist the IRS with its review of account holder compliance with tax reporting requirements.

(ii) Inquiries regarding substantial non-compliance. The IRS, based on the information reporting forms filed with the IRS by a trustee with respect to any trustee-documented trust subject to a Model 2 IGA for each calendar year (or the absence of such reporting), the certification described in paragraph (l)(2) of this section (or the absence of such certification), or any other information related to the trustee's compliance with respect to any trustee-documented trust for purposes of satisfying the trust's applicable Model 2 IGA requirements, may determine in its discretion that the trustee may not have substantially complied with the requirements applicable to a trustee of a trustee-documented trust. In such a case, the IRS may request from the

responsible officer information necessary to verify the trustee's compliance with such requirements. The IRS may also request the performance of specified review procedures by a person (including an external auditor or third-party consultant) that the IRS identifies as competent to perform such procedures given the circumstances surrounding the trustee's potential failure to comply with the requirements of an applicable Model 2 IGA with respect to one or more trustee-documented trusts. The IRS may notify the applicable Model 2 IGA jurisdiction that the trustee has not complied with its requirements as a trustee of one or more trustee-documented trusts

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Par. 6. Section 1.1472-1 is amended by revising paragraphs (c)(5)(iii), (f), and (g) to read as follows:

§1.1472-1 Withholding on NFFEs.

* * * * *

(c) * * *

(5) * * *

(iii) Revocation of status as sponsoring entity. The IRS may revoke a sponsoring entity's status as a sponsoring entity with respect to all sponsored direct reporting NFFEs if there is an event of default as defined in paragraph (g) of this section with respect to any sponsored direct reporting NFFE.

* * * * *

(f) Sponsoring entity verification--(1) In general. This paragraph (f) describes the requirements for a sponsoring entity to provide a certification of compliance with respect to each sponsored direct reporting NFFE for purposes of satisfying the requirements of

paragraph (c)(5) of this section and defines the certification period for such certifications. This paragraph (f) also describes the procedures for the IRS to review the sponsoring entity's compliance with such requirements during the certification period. Finally, this paragraph (f) describes the requirement that a sponsoring entity have in place a written sponsorship agreement with each sponsored direct reporting NFFE for which it acts and specifies the terms of such agreement. See paragraph (g)(1)(i) of this section, describing an event of default for a sponsoring entity that does not have a sponsorship agreement with each sponsored direct reporting NFFE for which it acts as a sponsoring entity. References in this paragraph (f) or paragraph (g) of this section to a sponsored direct reporting NFFE mean a sponsored direct reporting NFFE for which the sponsoring entity acts as a sponsoring entity under paragraph (c)(5)(ii) of this section.

(2) Certification of compliance-- (i) In general. The sponsoring entity must appoint a responsible officer to oversee the sponsoring entity's compliance with respect to each sponsored direct reporting NFFE for purposes of satisfying the requirements of paragraph (c)(5) of this section. On or before July 1 of the calendar year following the certification period, the responsible officer of the sponsoring entity must make a certification for the certification period with respect to all sponsored direct reporting NFFEs for which the sponsoring entity acts during the certification period on the form and in the manner prescribed by the IRS.

(ii) Late-joining sponsored direct reporting NFFEs. In general, with respect to a certification period, a sponsoring entity is not required to make a certification for a sponsored direct reporting NFFE that first agrees to be sponsored by the sponsoring

entity during the six month period prior to the end of the certification period, provided that the sponsoring entity makes certifications for such sponsored direct reporting NFFE for subsequent certification periods, and the first such certification covers both the subsequent certification period and the portion of the prior certification period during which the sponsored direct reporting NFFE was sponsored by the sponsoring entity. However, the preceding sentence does not apply to a sponsored direct reporting NFFE that, immediately before the NFFE agrees to be sponsored by the sponsoring entity, was a direct reporting NFFE or sponsored direct reporting NFFE of another sponsoring entity. The sponsoring entity may certify for a sponsored direct reporting NFFE described in the preceding sentence for the portion of the certification period prior to the date that the NFFE first agrees to be sponsored by the sponsoring entity if the sponsoring entity obtains from the NFFE (or the NFFE's sponsoring entity, if applicable) a written certification that the NFFE has complied with its applicable chapter 4 requirements during such portion of the certification period, provided that: (1) the sponsoring entity does not know that such certification is unreliable or incorrect; and (2) the certification for the sponsored direct reporting NFFE for the subsequent certification period covers both the subsequent certification period and the portion of the prior certification period during which such NFFE was sponsored by the sponsoring entity.

(iii) Certification period. The first certification period begins on the later of the date the sponsoring entity is issued a GIIN to act as a sponsoring entity or June 30, 2014, and ends at the close of the third full calendar year after such date. Each subsequent certification period is the three calendar year period following the close of the previous certification period.

(iv) Certifications. The certification will require the responsible officer of the sponsoring entity to certify to the following statements--

(A) The sponsoring entity meets all of the requirements of a sponsoring entity described in paragraph (c)(5)(ii) of this section;

(B) The sponsoring entity has the written sponsorship agreement described in paragraph (f)(4) of this section in effect with each sponsored direct reporting NFFE;

(C) There were no events of default (as defined in paragraph (g) of this section) with respect to the sponsoring entity, or, to the extent there were any such events of default, appropriate measures were taken by the sponsoring entity to remediate and prevent such events from reoccurring; and

(D) With respect to any failure to report to the extent required under paragraph (c)(3)(ii) of this section with respect to one or more sponsored direct reporting NFFEs, the sponsoring entity has corrected such failure by filing the appropriate information returns.

(3) IRS review of compliance--(i) General inquiries. The IRS, based upon the information reporting forms described in paragraph (c)(3)(ii) of this section filed with the IRS (or the absence of such reporting) by the sponsoring entity for each calendar year with respect to any sponsored direct reporting NFFE, may request additional information with respect to the information reported (or required to be reported) on the forms about any substantial U.S. owner reported on the form or the records for each direct reporting NFFE described in paragraph (c)(3)(iv) of this section. The IRS may also request any additional information from the sponsoring entity (including a copy of each sponsorship agreement the sponsoring entity has entered into with each sponsored FFI) to

determine its compliance with paragraph (f) of this section with respect to each sponsored direct reporting NFFE and to assist the IRS with its review of any substantial U.S. owners' compliance with tax reporting requirements.

(ii) Inquiries regarding substantial non-compliance. If, based on the information reporting forms referenced in paragraph (c)(3)(ii) of this section filed with the IRS by the sponsoring entity for each calendar year with respect to any sponsored direct reporting NFFE (or the absence of such reporting), the certification made by the responsible officer described in paragraph (f)(2) of this section (or the absence of such certification), or any other information related to the sponsoring entity's compliance with the requirements of a sponsoring entity with respect to each sponsored direct reporting NFFE for purposes of satisfying the requirements of paragraph (c)(5) of this section, the IRS determines in its discretion that the sponsoring entity may not have substantially complied with these requirements, the IRS may request from the responsible officer information necessary to verify the sponsoring entity's compliance with such requirements. The IRS may also request the performance of specified review procedures by a person (including an external auditor or third-party consultant) that the IRS identifies as competent to perform such procedures given the circumstances surrounding the sponsoring entity's potential failure to comply with the requirements of a sponsoring entity.

(4) Sponsorship agreement. The sponsoring entity must have a written sponsorship agreement in effect between the sponsoring entity and each sponsored direct reporting NFFE in which--

(i) The sponsored direct reporting NFFE agrees to provide the sponsoring entity access to the sponsored direct reporting NFFE's books and records regarding each of its owners (including AML/KYC documentation regarding the sponsored direct reporting NFFE's owners provided by the sponsored direct reporting NFFE with respect to each financial account it holds) and such other information sufficient for the sponsoring entity to determine the direct and indirect substantial U.S. owners of the sponsored direct reporting NFFE, including the information about such owners required under paragraph (c)(3)(ii) of this section to be reported on Form 8966, "FATCA Report" (or such other form as the IRS may prescribe);

(ii) The sponsored direct reporting NFFE obtains a valid and effective waiver of any legal prohibitions on reporting the information about its direct and indirect substantial U.S. owners required under paragraph (c)(3)(ii) of this section to be reported on Form 8966 (or such other form as the IRS may prescribe);

(iii) The sponsored direct reporting NFFE authorizes the sponsoring entity to act on the sponsored direct reporting NFFE's behalf with respect to the sponsored direct reporting NFFE's obligations as a sponsored direct reporting NFFE (for example, authorizing the sponsoring entity to file Form 8966 on the sponsored direct reporting NFFE's behalf, responding to the IRS inquiries described in paragraph (f)(3) of this section, and providing the certification described in paragraph (f)(2) of this section);

(iv) The sponsored direct reporting NFFE agrees to identify to the sponsoring entity on request each withholding agent and financial institution to which the sponsored direct reporting NFFE reports its status as a sponsored direct reporting NFFE and agrees to provide to the sponsoring entity a copy of the withholding certificate or written

statement prescribed in §1.1471-3(d)(11)(x)(B) (as applicable) that the sponsored direct reporting NFFE provides to each such withholding agent or financial institution;

(v) The sponsored direct reporting NFFE represents that it does not have any formal or informal practices or procedures to assist its substantial U.S. owners with the avoidance of the requirements of chapter 4;

(vi) The sponsored direct reporting NFFE agrees to cooperate with the sponsoring entity in responding to any IRS inquiries under paragraph (f)(3) of this section with respect to the sponsored direct reporting NFFE; and

(vii) The sponsoring entity retains the records described in paragraphs (c)(3)(iii) and (iv) of this section for the longer of six years or the retention period under the sponsoring entity's normal business procedures. A sponsoring entity may be required to extend the retention period if the IRS requests such an extension prior to the expiration of the period.

(g) Sponsoring entity event of default--(1) Defined. An event of default by the sponsoring entity means the occurrence of any of the following--

(i) Failure to have the written sponsorship agreement described in paragraph (f)(4) of this section in effect with each sponsored direct reporting NFFE;

(ii) Failure to satisfy the requirements of paragraph (c)(3)(iii) of this section with respect to each sponsored direct reporting NFFE that the NFFE would have been required to satisfy as a direct reporting NFFE;

(iii) Failure to report to the IRS on Form 8966, "FATCA Report," (or such other form as the IRS may prescribe) all of the information required under paragraph (c)(3)(ii) of this section with respect to each sponsored direct reporting NFFE and each of its

substantial U.S. owners (or report to the IRS on Form 8966 that the sponsored direct reporting NFFE had no substantial U.S. owners) by the due date of the form (including any extensions);

(iv) Failure to make the certification required under paragraph (f)(2) of this section;

(v) Failure to cooperate with an IRS request for additional information described in paragraph (f)(3) of this section, including requests for the records described in paragraph (c)(3)(iv) of this section and requests to extend the retention period for these records as described in (f)(4)(vii) of this section;

(vi) Making any fraudulent statement or misrepresentation of material fact to the IRS or representing to a withholding agent or the IRS its status as a sponsoring entity under paragraph (c)(5) of this section for an entity other than an entity for which it acts as a sponsoring entity; or

(vii) Failure to obtain from each sponsored direct reporting NFFE the information required to report on Form 8966.

(2) Notice of event of default. Following an event of default known by or disclosed to the IRS, the IRS will deliver to the sponsoring entity a notice of default specifying the event of default and, if applicable, identifying each sponsored direct reporting NFFE to which the notice relates. The IRS will request that the sponsoring entity remediate the event of default within 45 days (unless additional time is requested and agreed to by the IRS). The sponsoring entity must respond to the notice of default and provide information responsive to an IRS request for information or state the reasons why the sponsoring entity does not agree that an event of default has occurred.

(3) Remediation of event of default. A sponsoring entity will be permitted to remediate an event of default to the extent that it agrees with the IRS on a remediation plan. The IRS may, as part of a remediation plan, require additional information from the sponsoring entity, remedial actions, or the performance of the specified review procedures described in paragraph (f)(3)(ii) of this section.

(4) Termination--(i) In general. If the sponsoring entity does not provide a response to a notice of default within the period specified in paragraph (g)(2) of this section, or if the sponsoring entity does not satisfy the conditions of the remediation plan within the time period specified by the IRS, the IRS may deliver a notice of termination that terminates the sponsoring entity's status, the status of one or more sponsored direct reporting NFFEs as a direct reporting NFFE, or both the sponsoring entity and one or more sponsored direct reporting NFFEs.

(ii) Termination of sponsoring entity. If the IRS notifies the sponsoring entity that its status is terminated, the sponsoring entity must send notice of the termination to each withholding agent from which it receives payments and each financial institution with which it holds an account for which a withholding certificate or written statement prescribed in §1.1471-3(d)(11)(x)(B) (as applicable) was provided with respect to each sponsored direct reporting NFFE within 30 days after the date of termination. A sponsoring entity that has had its status terminated cannot reregister on the FATCA registration website to act as a sponsoring entity for any sponsored direct reporting NFFE unless it receives written approval from the IRS. Unless the status of the sponsored direct reporting NFFEs has been terminated, the sponsored direct reporting NFFEs may register on the FATCA registration website as direct reporting NFFEs or as

sponsored direct reporting NFFEs of another sponsoring entity, other than a sponsoring entity that is related to the sponsoring entity that was terminated. An entity is related to the terminated sponsoring entity if they have a relationship with each other that is described in section 267(b).

(iii) Termination of sponsored direct reporting NFFE. If the IRS notifies the sponsoring entity that the status of a sponsored direct reporting NFFE is terminated (but not the sponsoring entity's status), the sponsoring entity must remove the sponsored direct reporting NFFE from the sponsoring entity's registration account on the FATCA registration website and send notice of the termination to each withholding agent from which the sponsored direct reporting NFFE receives payments and each financial institution with which it holds an account for which a withholding certificate or written statement prescribed in §1.1471-3(d)(11)(x)(B) (as applicable) was provided with respect to such sponsored direct reporting NFFE within 30 days after the date of termination. A sponsored direct reporting NFFE that has had its status as a sponsored direct reporting NFFE terminated (independent from a termination of status of its sponsoring entity) may not register on the FATCA registration website as a direct reporting NFFE or as a sponsored direct reporting NFFE of another sponsoring entity unless it receives written approval from the IRS.

(iv) Reconsideration of notice of default or notice of termination. A sponsoring entity or sponsored direct reporting NFFE may request, within 90 days of a notice of default or notice of termination, reconsideration of the notice of default or notice of termination by written request to the IRS.

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Par. 7. Section 1.1474-1 is amended by adding paragraph (d)(4)(vii) to read as follows:

§1.1474-1 Liability for withheld tax and withholding agent reporting.

(d) * * *

(4) * * *

(vii) [The text of proposed §1.1474-1(d)(4)(vii) is the same as the text of §1.1474-1T(d)(4)(vii) published elsewhere in this issue of the **Federal Register**].

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John Dalrymple

Deputy Commissioner for Services and Enforcement.

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